



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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April 23, 2015

Ms. Elizabeth Harper, Esq.
2150 Intelliplex Drive
Suite 134
Shelbyville, Indiana 46176

Re: Formal Complaint 15-FC-90; Alleged Violation of the Access to Public Records Act by the City of Carmel

Dear Ms. Harper,

This advisory opinion is in response to your formal complaint alleging the City of Carmel violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-1.5. The City has responded to the complaint via Mr. Douglas C. Haney, Esq., Counsel. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-3-3 and Ind. Code § 5-14-5-7, I issue the following opinion.

BACKGROUND

Your complaint dated March 10, 2015 alleges the City Of Carmel ("City") violated the APRA by denying your request for records regarding the sewage system at the Kingswood addition.

On November, 21, 2014, you attempted to obtain "maintenance records for the sewage system at the Kingswood addition since 1988". Your request was denied by the City on December 1, 2014, because your request did not describe the records sought with reasonable particularity.

On December 11, 2014, the City received your revised request which included records spanning from January 1, 2003-December 31, 2013. The City responded it would review the revised request, but denied the request on December 22, 2014, stating the request, again, did not identify the records requested with reasonable particularity. However, the City did identify five (5) pages of records, relating to a 2013 sewage backup, which may have been related to your request. Those pages were made available to you.



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On January 30, 2015, you attempted a third request for records, asking for “a copy of cleaning reports from the two (2) most recent cleanings of the sewage system at the Kingswood Addition.” The City sent a response on February 24, 2015, stating no records were identified responsive to your request. However, you contend the records you were seeking were listed as an exhibit in pending arbitration involving the City.

The City has responded to your complaint by contending this Complaint is moot regarding the first two (2) records requests. Thirty (30) days have elapsed from the denial; therefore, the timeframe for filing a complaint has passed pursuant to Ind. Code § 5-14-5-7(a)(1). The City further states the Complaint was not properly filed on the City’s required form in regards to request number two (2). The City further claims the first two (2) requests failed to specify records with reasonable particularity and the third request asked for records the City could not identify. The City contends in good faith, the documents which were identified and deemed possibly relevant were made accessible and the APRA cannot be used to circumvent arbitration procedures in terms of accessing records.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The City of Carmel (City) is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

Ind. Code § 5-14-3-3(1)(a) requires individuals seeking information; request the records with reasonable particularity. That particular term is not defined in Indiana Code; therefore, it must be addressed on a case-by-case basis. In the present case, the first two (2) requests do not appear to meet the required specificity.

The Indiana Court of Appeals addressed the issue of reasonable particularity in the APRA in *Jent v. Fort Wayne Police Dept.*, 973 N.E.2d 30 (Ind. Ct. App. 2012), and again in *Anderson v. Huntington County Bd. of Com'rs.*, 983 N.E.2d 613 (Ind. Ct. App. 2013). The Court in *Jent* held:



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Whether a request identifies with reasonable particularity the record being requested turns, in part, on whether the person making the request provides the agency with information which enables the agency to search for, locate, and retrieve the records.

Moreover "when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity." *See Opinions of the Public Access Counselor 10-FC-57; 08-FC-176*. Certainly a request cannot always be considered to be made without reasonable particularity solely because it covers a large number of records. As a general guideline, however, the Public Access Counselor has advised when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity. *See Opinion of the Public Access Counselor 09-FC-24*.

The City concludes the first two (2) requests are not reasonably particular because your request encompasses a large swath of records which may or may not be responsive. While this Office has often said a request does not have to identify a record or set of records with pinpoint accuracy, it should give a public agency a reasonable narrow place to look. The first two (2) requests do not appear to meet the particular specificity requirement. In any case, the denial occurred over thirty (30) days from the filing of your formal complaint and is therefore dismissed for lack of standing.

Response three (3), while reasonably particular, did not yield any documentation on the part of the City. A public agency is not required to create records which do not exist in order to be responsive to a request.

You contend some of the records were submitted as part of the arbitration process. These records may have been part of a response had a request been reasonably particular. The City has since provided you copies of those arbitration exhibits. It is my sincere hope these documents satisfy a portion of your access requests.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the City of Carmel did not violate the Access to Public Records Act.

Regards,



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A handwritten signature in black ink, appearing to read "LH Britt", is written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Mr. Douglas C. Haney, Esq.